

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4934 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 - No

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KALABHAI CHATURBHAI SODA                      PARMAR

Versus

G S R T C

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Appearance:

MR AK CLERK for Petitioner

MR HARDIK C RAWAL for Respondent No. 1

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 12/07/1999

ORAL JUDGEMENT

In this petition under Articles 226 and 227 of the Constitution, the petitioner, a conductor in the Gujarat State Road Transport Corporation, has challenged the judgment and award dated 27.3.1986 passed by the Industrial Tribunal, Baroda in Reference (IT) No. 404/84 which was earlier numbered as Old Reference (IT) No. 121/83.

2. By the impugned order dated 18.2.1980 (Annexure "B" to the petition), the Depot Manager, Baroda imposed penalty of reducing the petitioner's pay to the starting stage in the pay-scale for conductors on the charge that on 21.8.1979 when the petitioner was in charge of the bus plying from Baroda to Dhasa, the petitioner was to accompany the party from Baroda to Dhasa and thereafter to bring passengers from the villages on the route from Dhasa to Baroda. However, the petitioner did not carry out the said instructions and brought the bus from Dhasa to Baroda without bringing any passenger. The State Transport Employees Union raised an industrial dispute for challenging the aforesaid order as well as the orders in respect of three other employees, passed by the State Transport Corporation. Four disputes were thus clubbed altogether and referred to the Labour Court, Ahmedabad. The Union filed a statement of claim on 18.3.1985 in respect of an employee called M.R. Vankar, but did not file any statement of claim in respect of the other three employees including the petitioner. Hence, the matter proceeded only in respect of the claim of M.R. Vankar. The arguments were also heard only for that particular case on 21.3.1986. When the Labour Court started dictating the order on 24.3.1986, original petitioner K.C. Soda Parmar appeared before the Labour Court personally and submitted an application that his case may also be heard. The Labour Court rejected the said application on the ground that the statement of claim was not filed for about three years. The Labour Court, therefore, proceeded to dictate the order in respect of the case of M.R. Vankar and passed the order directing the respondent-Corporation to reinstate M.R. Vankar with full backwages, with the penalty of stoppage of three increments with future effect but rejected the reference in respect of the petitioner. It is against the aforesaid award dated 27.3.1986 of the Industrial Tribunal that the original petitioner preferred this petition.

3. During pendency of the petition, original petitioner K.C. Soda Parmar expired and, therefore, his heirs i.e. his widow, sons and daughter filed Civil Application No. 11951 of 1998 for being brought on record which Civil Application has been granted.

4. At the hearing of the petition, the learned counsel for the petitioner has submitted that the deceased employee having entrusted the matter to the Union, the employee or his family members should not be made to suffer if the Union did not file the statement of

claim. On merits, the learned counsel submitted that the written instructions given to the petitioner for the aforesaid trip on 21.8.1979 required the petitioner to take a party of 60 passengers from Baroda to Dhasa via. Vallabhipur and after dropping the party at Dhasa, unoccupied bus was to be brought back to Baroda. The said written instructions are produced at Annexure "A" to the petition. The learned counsel submitted that in the normal course if the bus was required to take passengers enroute from Dhasa to Baroda, the bus will be marked as an extra bus and a letter to that effect would be written by the Depot Manager, Dhasa to Depot Manager, Baroda. No such letter was placed on record nor was such letter given to the petitioner. Hence, the petitioner was required to comply with the written instructions and not to take any passenger enroute from Dhasa to Baroda. It is, therefore, submitted that the petitioner could not have been held to be guilty of any misconduct of not complying with any instructions.

The learned counsel has further submitted that even if there were any oral instructions as alleged, the said oral instructions could not have overruled the express written instructions given to the petitioner. If an employee is required to obey the oral instructions which were directly contrary to and inconsistent with the written instructions, the employee would be placed in a very difficult position in either event whether he obeys the instructions or not. It was, therefore, but natural for the petitioner and also proper to act according to the written instructions rather than taking the risk of facing inquiry for defying the written instructions. It is further submitted that the Corporation did not incur any loss by no passengers having been taken while returning from Dhasa to Baroda as under the contract carriage the Corporation had already charged the party for the return trip as well. It is further submitted that otherwise also the prospective passengers were not put to inconvenience as it was supposed to be an extra bus under the contract carriage system.

Without prejudice to any of the above contentions, the learned counsel for the petitioner has submitted that at the time when the order of penalty was passed on 18.2.1980, the petitioner was at the stage of basic salary of Rs.284/- after having put in 14 years service. By the impugned order the petitioner's pay was reduced to the starting stage of Rs.190/- which caused the loss of Rs.800/- to Rs.900/- per month. Hence, even if the alleged misconduct is held to be proved, the penalty was disproportionate to the alleged loss incurred

by the Corporation.

5. On the other hand, Mr Hardik Raval, learned counsel for the respondent Corporation has submitted that since no statement of claim was filed for almost three years, the order passed by the Industrial Tribunal was just and proper. In the alternative, Mr Raval has submitted that the matter may be remanded to the Tribunal for fresh trial.

6. Having heard the learned counsel for the parties, it appears to the Court that there is considerable force in the submissions made on behalf of the petitioners. The original petitioner admittedly approached the Union for raising an industrial dispute. The dispute was accordingly referred to the Industrial Tribunal. It is not possible to assume that the original petitioner himself neglected to give instructions to the Union and, therefore, the statement of claim was not filed. The very fact that before the reference was decided, the original petitioner appeared before the Tribunal and requested the Tribunal to take up his case and decide it on merits indicates that the petitioner had not given up his claim and, therefore, the Tribunal ought to have delinked the case of the petitioner from the case of N.M. Vankar. Instead of following the said course, the Tribunal refused to consider the petitioner's case altogether. Even if there was delay in filing the statement of claim, the Tribunal could have considered the delay as a ground for restricting the relief to be granted to the petitioner by not granting any relief for those three years. Hence, the order of the Tribunal rejecting the petitioner's application and passing the award not to grant any relief to the petitioner deserves to be set aside.

7. The next question is whether the matter should be remanded to the Tribunal as suggested by the learned counsel for the respondent-Corporation or whether the Court itself should pass appropriate orders on merits as submitted by the learned counsel for the petitioner.

8. It is true that ordinarily the matter would have been required to be remanded to the Tribunal for fresh hearing, but looking to the fact that the original petitioner was made to suffer the major penalty of reduction in the pay to the starting stage of the scale for the alleged misconduct, which was nothing more than not carrying out oral instructions contrary to the specific written instructions given to the petitioner and

also because the alleged misconduct took place in the year 1979 and also considering the fact that the original petitioner has expired during pendency of this petition and his widow and children are brought on record and, therefore, they will not be in a position to effectively controvert the case of the respondent-Corporation or effectively cross-examine the concerned officer on the question of oral instructions, and considering the fact that the only loss alleged to be caused by the petitioner's misconduct was that the Corporation lost some extra income on account of the petitioner not having brought passengers on one trip from Dhasa to Baroda and that it was inaction on the part of the original petitioner's representatives in not filing the statement of claim for three years which resulted into the impugned award of the Tribunal, this Court has thought it fit to substitute the penalty imposed on the original petitioner by the respondent-Corporation (wiping out permanently the increments earned for 14 years of his prior service) by the penalty of withholding six increments of the petitioner without future effect.

9. The respondent Corporation shall accordingly refix the pay of original petitioner K.C. Soda Parmar and pay arrears of difference of salary and allowances and all the retirement benefits on that basis to petitioner No. 1(A) Shantaben Kalabhai Soda Parmar, widow of the deceased within three months from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier.

10. Rule is made absolute to the aforesaid extent with no order as to costs.

Sd/-

July 12, 1999 (M.S. Shah, J.)

sundar/-